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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1489th MEETING

Held at Headquarters, New York,
on Wednesday, 27 March 1996, at 3 p.m.

Chairman: Mr. BÁN
(Vice-Chairman)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Zambia (continued) (CCPR/C/63/Add.3; HRI/CORE/1/Add.22/Rev.1)

Rights to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (articles 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Kasanda and Mrs. Chigaga (Zambia) took places at the Committee table.

2. The CHAIRMAN drew attention to a press release from the Media Institute of Southern Africa dated 27 March 1996 regarding the release from prison of two journalists who had been detained in maximum security jails indefinitely on charges of contempt of Parliament.

3. Mr. KASANDA (Zambia) said that he was relieved to report to the Committee that the journalists had been released by an order of the High Court on the grounds that there were no provisions in Zambian legislation under which they could be indefinitely detained. However, the judge had ruled that the Parliament could still decide to lodge a complaint with the Director of Public Prosecutions who could compel the journalists to appear before Parliament. The release of the journalists demonstrated that the rule of law existed in Zambia and that the actions of the Parliament were subject to scrutiny by the independent judiciary. He emphasized that under the new regime people were free to disagree with the Government and that there were many independent newspapers like The Post. However, in a democracy, it was also necessary that those who made libellous statements be brought to account.

4. In reply to a question regarding the immunity of the President in his private capacity, he said the law in Zambia stipulated that no civil proceeding could be instituted against the person holding the office of President or performing the functions of that office in respect of anything such a person had done or admitted to having done. The law, whether appropriate or not, said that the President's private actions could not be questioned.

5. In reply to a question relating to the arrest of minors, he said that they could be charged on the same footing as adults. In such cases, the identity of minors was kept confidential.

6. To the question whether bail was limited to monetary payment, he said individuals could also be released on their own recognizance. Confessions made to a police officer were admissible if it was determined that they had been made freely and fairly.

7. He regretted that he did not have the necessary information to reply to an inquiry regarding the maximum length of time convicted prisoners had been kept

waiting on death row. In all capital cases, a clemency board reviewed the death penalty and made recommendations to the President, who often commuted the sentence to life imprisonment. He doubted that any person had been left on death row for 30 years as some reports had indicated, since the country itself was barely 30 years old.

8. Ms. MEDINA QUIROGA expressed relief at the release of the two journalists and asked what would be done with the third, a columnist named Lucy Sichone who had also found to be in contempt of Parliament, and whether she would be arrested if she were now to appear before Parliament as ordered.

9. Lord COLVILLE said that he had received clarification from the representative of Zambia that in cases where confessions were alleged to have been made under duress, the prosecution had to disprove the allegations.

10. Ms. EVATT asked whether a woman had the right to stand bail in her own recognizance or for a third person.

11. Mr. KASANDA (Zambia) said that women had the right to stand bail for a third person and in their own recognizance. He could not give any assurances as to the fate of the third journalist charged with contempt of Parliament, but he believed the Parliament would certainly take into consideration the ruling of the High Court.

12. Mr. KRETZMER inquired whether there were any procedures for examining complaints of police misconduct.

13. Mrs. CHIGAGA (Zambia) said that the Director of Public Prosecutions was also the senior officer of the police force. Individuals could lodge complaints against a police officer directly with the Director of Public Prosecutions, who then decided whether the police officer would be prosecuted on criminal charges or subject to administrative sanctions. In cases of corruption, officers were reported to the Anti-Corruption Commission and the Investigator-General dealt with complaints of misconduct occurring within the Government.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, opinion and expression and freedom of association and assembly (articles 12, 13, 17, 18, 19, 20, 21, 22 and 24 of the Covenant) (section III of the list of issues)

14. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Zambia, namely: (a) the compatibility of the provision of the Penal Code which stipulated that children over eight years of age could be held criminally responsible with the provisions of the Covenant, particularly article 24; (b) information on the problem of the employment and exploitation of young children; (c) the extent of the problem posed by illegal immigrants; (d) information on the legislation and practice concerning authorized limitations on the right to privacy; (e) the privileges, if any, enjoyed by Christian churches as compared with other churches or religious groups and information on the laws and regulations governing the recognition of religious denominations by public authorities; (f) details regarding the outcome of complaints of bias by State-owned newspapers and broadcasting services

towards the ruling party; and (g) information on the criteria and procedures for the registration of political parties and trade unions and any measures adopted to secure political pluralism.

15. Mr. KASANDA (Zambia) said that the rights of freedom of movement, freedom of religion, opinion and expression and freedom of association and assembly were all guaranteed under the Constitution. He was not certain that that law stipulating that children over eight years of age could be held criminally responsible for their action could be reconciled with the provisions of the Covenant. In practice, certain safeguards had been put into place to protect minors, such as keeping the identity of juveniles confidential, conducting the trials of minors in camera and in juvenile courts and sending juvenile offenders found guilty to approved reform schools or placing them in the care of social welfare officers. However it was true that economic constraints had severely curtailed the Government's capacity to protect juvenile offenders.

16. The Constitution prohibited any employment of children which prejudiced their health or education or interfered with their physical, mental or moral development. It prohibited trafficking in children and protected them against physical or mental ill-treatment and all forms of neglect, cruelty and exploitation. However, the employment of minors was related to the complex economic problems of the country. The Government was unable to adequately safeguard the interests of the children who were often compelled to work as a result of poverty and hunger. Measures to address these difficulties were obviously linked to an overall improvement of the economy.

17. As in all countries, it was difficult to assess the magnitude of the problem of illegal immigrants since they were, by definition, not documented and hard to trace. There was a considerable problem with illegal immigrants in Zambia who were involved in the illegal traffic of semi-precious and precious stones.

18. Article 17 of the Zambian Constitution protected the right of privacy and property. However, that right was not absolute; it was subject to certain limitations imposed in the interest of defending public safety and public order, protecting the rights or freedoms of other persons, assessing property on which taxes were due and, when necessary, enforcing the judgement or order of the court in civil proceeding. Those were the only authorized limitations to which the right of privacy was subject.

19. The President declared Zambia a Christian country because 99 per cent of the population was Christian. It was not an executive order; in fact, Zambia was a secular State. Article 19 of the Constitution guaranteed the freedom of thought, conscience and religion. There were no restrictions on the exercise of those freedoms, nor was there any coercion to change or renounce beliefs or views. In Zambia, religion was a personal choice. Christian churches did not enjoy any special privileges as compared to other churches.

20. There was an intense debate in Zambia regarding the role of the media, which was closely linked to the protection of freedom of expression, guaranteed under article 20 of the Constitution. Efforts were currently under way to privatize State-owned media, a trend that was supported by public opinion.

21. The procedure for the registration of political parties was laid down in an act governing the registration of societies which required that an association or political party register its articles of association. There were currently over 30 political parties in the country and no restrictions on the right to form new ones.

22. Mr. KLEIN, referring to paragraph 83 of the report, said that while it was apparent that Zambia was aware of the essential need to protect the right to freedom of expression, the case of the two journalists who had been arrested for contempt of Parliament gave rise to serious concerns. Although they were reported to have been released, it was still possible for the Parliament to request that the Director of Public Prosecutions take further action; therefore, the issue remained. Article 19 of the Covenant made provision for certain restrictions on freedom of expression, under law and as necessary for the respect of the rights and reputations of others or for the protection of national security or public order or public health and morals. The authorities in Zambia should carefully examine its domestic legislation to ensure that it was in conformity with the Covenant on paper and in practice. He asked the representatives to comment on the restrictions on the freedom of expression in Zambia, specifically in cases of libel (article 25 (b) of the National Assembly (Powers and Privileges) Act).

23. Ms. MEDINA QUIROGA asked the representatives to comment further on any differences between the status of Christian churches as compared with churches of other denominations in Zambia. With regard to paragraph 80, she asked how a student could be expelled from school for failing to sing the national anthem or salute the flag when the court had held that a student may not be compelled by the State to do so.

24. Ms. EVATT said that, on the subject of freedom of assembly, the High Court had struck down articles 5 (4) and 7 (a) of the Public Order Act in January 1996 on the grounds that the requirement to obtain police permission for any public assembly violated the constitutional rights of Zambians. The Chief Justice had further observed that that requirement had been used in the past to muzzle critics and opponents of the Government and that permits were frequently denied on spurious grounds which had nothing to do with ensuring public order and safety. She wished to know whether the proposed new public order act had taken account of the Court's ruling and whether its provisions would conform to the Constitution of Zambia and to the Covenant.

25. She was concerned that the restrictions which article 20 (3) of the Constitution allowed to be imposed on freedom of expression might be construed much more widely than article 19 (3) of the Covenant permitted. It would be useful to know to what extent the provisions of the Covenant were taken into account in the application of article 20 (3) of the Constitution and the circumstances under which that article was used to authorize pre-publication censorship. She recalled further that the Constitutional Review Commission had recommended that freedom from censorship must be afforded protection in the Constitution and wondered when that recommendation would be implemented.

26. Mr. KRETZMER said that the recent imprisonment of the editors of The Post was not the first time that action had been taken against journalists of that

newspaper. The representative of Zambia had argued that the action by Parliament was not an attempt to close down the newspaper, but freedom of expression could be denied not only by the outright closure of a newspaper but also by harassing its journalists. He was particularly concerned that criminal charges were brought against journalists for the libel of senior government officials, including the President. In his view, the use of the criminal process in such cases was a potent weapon which could be used by the Government against its critics. He would therefore welcome additional information on the Government's policy on criminal defamation as it related to members of the Government and wondered whether such cases might not be resolved in civil proceedings.

27. Mr. KASANDA (Zambia), responding to Mr. Kretzmer's question, said that the notion of criminal defamation should be viewed not in the context of the harassment of journalists but rather as an effort to hold journalists accountable for their actions by requiring them to substantiate the stories published in their newspapers. In Zambia, certain well-financed newspapers sought to bring public figures, and in particular the President and his family, into disrepute by publishing spurious and unsubstantiated allegations against them. When the Government responded, its actions were construed as harassment and curtailment of freedom of expression.

28. Turning to the question posed by Ms. Evatt concerning the new public order act, he pointed out that, although the organizers of public assemblies were required to give the police two weeks' notice, the latter had no discretion to refuse permission. The requirement to obtain permission was an administrative regulation to prevent situations such as two or more groups holding assemblies at the same place and at the same time. Indeed, the fact that the Chief Justice had declared certain provisions of the old Public Order Act unconstitutional showed that Zambians were now living in a genuine democracy.

29. The constitutional provisions for the curtailment of the freedom of expression in certain circumstances were intended only to preserve public order and to protect the rights and freedoms of others.

30. On the question raised by Ms. Medina Quiroga concerning standing when the national anthem was played, he said that the State could not countenance situations in which certain individuals and groups refused to recognize its powers and institutions while at the same time accepting its benefits. Parents who belonged to certain religious denominations, for example, refused to allow their children to attend school, thereby jeopardizing their future.

31. Mr. MAVROMMATIS said that Zambia's image abroad was tarnished by reports of the imprisonment of journalists for criticizing public officials. Instead of imprisonment and other restrictions on press freedom, it might be better to follow the example of a number of other countries and establish an independent press council which could act as a watchdog organization and sanction its own members, if necessary.

32. Mr. KASANDA (Zambia) said that an independent press association already existed in Zambia, but that, regrettably, it had not fulfilled the purposes for which it had been established. Moreover, unlike the practice in other countries self-censorship did not exist in Zambia.

33. Mr. BHAGWATI, concluding his remarks, welcomed the candid dialogue with the representatives of Zambia and the progress which that State had made in the field of human rights over recent years, particularly with regard to the strengthening of the independence of the judiciary. Greater effort must be made, however, to incorporate the provisions of the Covenant into domestic law. Article 23 (4) (b), for example, was incompatible with article 25 of the Covenant. The derogation from fundamental rights and freedoms permissible under article 25 of the Constitution in time of public emergency far exceeded that which was permissible under article 4 of the Covenant. Moreover, the effect of the provisions of article 23 (4) (c) and (d) was to legalize discrimination in social practices in violation of the provisions of the Covenant.

34. He was concerned that the Constitutional Review Committee's recommendations on freedom of the press had not been the subject of public debate. Also, while welcoming the news of the release of the editors of The Post, he remained of the view that Parliament was only competent to refer such cases to the Director of Public Prosecutions, who should make the final determination of whether or not there were grounds for prosecution. The need for accountability could never be used to justify the harassment of the press. In his own country, India, the press engaged in vigorous criticism of the Government and no action was taken against them.

35. Finally, he wished to express his deep concern over reports of the poor conditions under which prisoners were held and the practice of torture. He regretted that the Zambian Human Rights Committee was not a permanent body and that the recommendations of the Constitutional Review Committee included proposals that retired judges could be reappointed to the High Court at the President's pleasure and that judges could be removed from office for gross misconduct. He hoped that Zambia would address the Committee's concerns in a constructive manner with a view to improving the human rights situation in that country.

36. Ms. MEDINA QUIROGA thanked the delegation for its helpful attitude and said that the Committee took into account the difficulties faced by Zambia as a third world country in implementing the provisions of the Covenant. She emphasized that when the law or the Constitution appeared to be incompatible with the Covenant, Zambia, as a party to the Covenant, must comply with its provisions.

37. With regard to women's rights, the fact that women could choose the law under which they would be married was in fact no choice at all and the State should not support any kind of legalized discrimination. Action to improve the lot of women in education was encouraging since it showed that affirmative action programmes were being planned. It was also encouraging to note greater awareness in the judiciary of gender bias.

38. In a state of emergency, the Zambian Constitution allowed for discriminatory measures not provided for by the Covenant. Article 25 of the

Constitution allowed derogation of the rights of minors, in violation of article 24 of the Covenant. The delegation had not answered her question on article 31 regarding the declaration of a state of emergency, and such a declaration's immediate consequences for human rights. Any violation of basic human rights during that period, even if only for seven days, would be a serious matter and a violation of the Covenant.

39. The deplorable situation in the country's prisons was due partly to the country's economic problems, but perhaps some behaviours could be decriminalized thus reducing the number of prisoners.

40. Article 43 of the Constitution seemed to be in violation of articles 14 and 26 of the Covenant, which provided for the right to a fair trial and equality before the law. The fact that minors as young as 8 years of age could be held criminally responsible and tried in adult court was a violation of the Covenant's article 24. Similarly, by expelling children from school because of pregnancy the State violated that article because it deprived them of their right to an education. The right to freedom of conscience provided for in article 18 of the Covenant was just that, a right and not a privilege, and children could not be deprived of their right to an education for exercising their right to freedom of conscience by refusing to sing the national anthem. She hoped that the delegation would convey to the Government of Zambia that the procedures governing contempt of Parliament were incompatible with article 19 of the Covenant and that the Committee expected that since two of the accused journalists had been released, the third would not be held.

41. Ms. EVATT thanked the delegation for their frank and open dialogue. She said that women were underrepresented at all levels of Zambian society, discrimination existed in fact and in law and the Constitution must be revised in the light of an analysis of those customary laws which allowed discrimination against women. Measures must be taken to put and end to all discrimination in both the public and private sectors. Affirmative action programmes and steps to protect women against violence were urgently needed. She hoped that the MUNYAMA report would contain measures to improve prison conditions and to reduce the number of prisoners through reform of the legal system.

42. In an open society, freedom of expression was an overriding right. The political authorities must be open to criticism and government power should not be used to crack down on the exercise of that freedom. She hoped that the judiciary would be guided by the provisions of the Covenant concerning freedom of expression and assembly. Furthermore, the right of freedom of religion became meaningless if the price for exercising that freedom was exclusion from education. She felt that Zambia still had a long way to go in guaranteeing civil and political rights but was confident that, with the Committee's guidance and input, it would achieve that goal.

43. Mr. BUERGENTHAL expressed satisfaction at the move to a multi-party democratic system in Zambia and thanked the delegation for its candour. Unfortunately, the absence of any experts from the capital had prevented the Committee from establishing a more comprehensive dialogue with the Government of Zambia as required by the Covenant. Having ratified the Covenant Zambia was required to bring its domestic legislation into line with that instrument and

could not use "realities" to justify non-compliance with its international obligations.

44. Discrimination against women was a serious violation of the Covenant, especially since the application of customary law and other traditional measures tolerated by the State relegated women to third- or fourth-class citizenship. The provisions concerning the state of emergency were incompatible with article 4 of the Covenant because the most fundamental human rights still must be guaranteed even during emergencies.

45. He was also concerned with prison conditions, especially for those who were merely awaiting trial and therefore entitled to the presumption of innocence. Their incarceration was a serious violation of human rights. He was pleased to see that the two journalists had been released before the Committee had expressed its views on the subject; it appeared to reflect the High Court's commitment to seeing justice done; he hoped that the third accused journalist would not be imprisoned.

46. Freedom of speech and of the press played a major role in strengthening and guaranteeing democracy. The media should not protect government officials in the interest of helping to maintain transparency in government and protect against abuses of power.

47. Mrs. CHANET thanked the delegation and hoped that they would convey to their Government the Committee's hope that high-level officials would be present when the third report was presented. She was encouraged by the positive changes in Zambia but felt that the Committee could not ignore the fragility of the move towards democracy.

48. In the case of the journalists, although the judiciary had eventually ordered their release, they had been detained in an illegal and arbitrary manner for 24 days and without compensation in violation of article 9, paragraphs 1, 3, 4 and 5, of the Covenant. The punishment had been disproportionate: a better solution would have been to publish a right of reply or to have an independent body determine compensation for the aggrieved parties.

49. The constitutional provisions governing states of emergency and discrimination against women were in violation of articles of the Covenant. The Constitution must be amended to comply fully with the Covenant; indeed, the Covenant as a whole should be incorporated in the Constitution. With regard to the ill-treatment of prisoners, she hoped that the MUNYAMA report and white paper soon to be issued would include new measures to put an end to the practice of torture which had allegedly gone unpunished in the past.

50. Mr. LALLAH thanked the delegation but also expressed regret concerning the absence of experts from the capital. The danger of considering complaints at the ambassadorial level, was that the hearings could be seen as a mere international public relations exercise.

51. All those in power in Zambia must be made more aware of their obligations under the Covenant; it was disappointing to find that the Constitutional Review Commission had not taken the Covenant into account and that the provisions of

the Covenant did not seem to be well known to the members of the National Assembly. While it was good that fundamental rights were protected by the Constitution, the supreme law of the land, it should be recognized that any law which seemed incompatible with the Constitution was automatically null and void. For example, while article 28 of the Constitution made the High Court responsible for appeals by persons whose rights had been violated, if derogations were allowed by the Constitution, then the courts were powerless.

52. The derogations concerning gender equality and the state of emergency were incompatible with the terms of the Covenant. It was unacceptable that the law should sanctify customs which restricted the rights of women. For example, if it was true that women could not provide their own bail the law was a serious attack on the dignity of women and on their equality before the courts. The State must take measures and pass legislation to implement the terms of the Covenant.

53. The derogations from freedom of expression appeared to be applied incorrectly. A formal press code should set out the duties and responsibilities of the press, and be recognized by the Government, and a more institutionalized press association should self-regulate the profession and guarantee adherence to the law.

54. The terms of the Covenant should be better publicized in the country. The Government-controlled and private media should be encouraged to inform the people of their rights so that they would better appreciate not only criticism of the country, but also how Zambia was complying with its international commitments.

55. Mr. KRETZMER, after complimenting the delegation on its positive attitude, said that legislation must be passed to eliminate de facto discrimination in all areas, both private and public, as called for in article 26 of the Covenant. The use of the criminal process to restrict journalists' freedom of speech was unacceptable under article 19 of the Covenant and would have a chilling effect on journalists' ability to criticize Government and those in power. While he expressed sympathy with the economic constraints accounting for bad prison conditions, he suggested decriminalizing some acts to reduce the number of prisoners and recommended that the delegation remind the Government that article 10 of the Covenant implied that the number of prisoners was a function of the State's ability to treat them humanely and with dignity.

56. Mr. KLEIN congratulated the Government of Zambia on the changes that had taken place under the new Constitution. Some instances of incompatibility between domestic legislation and the Covenant persisted, however, and he recommended the establishment of a permanent body within the Government to conduct a thorough review of domestic legislation in the light of Covenant obligations. The laws regarding freedom of the press deserved special attention. The press was a necessary institution in a free and democratic society, and any intimidation or harassment of journalists constituted an attack on freedom of the press.

57. He was pleased to learn that there were no legal or political obstacles to Zambia's accession to the Convention on the Prevention and Punishment of the

Crime of Genocide and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Although their ideals were enshrined in articles 6 and 7 of the Covenant, accession to those instruments would strengthen Zambia's commitment and provide an international yardstick against which to measure domestic laws. Finally, it seemed to him that judges had excessive discretion with regard to corporal punishment, and the Government might want to rethink its approach.

58. Lord COLVILLE paid tribute to the excellent cooperation provided by the delegation of Zambia, especially concerning the National Assembly Powers Act. The news of the release of the two journalists detained under that Act had been most welcome.

59. With regard to prison conditions, he commended the initiatives to introduce community service sentences or probation, as they were more likely to comply with the requirements of article 10, paragraph 3, of the Covenant than the current system, and would be more cost effective.

60. Mr. PRADO VALLEJO said that great progress had been made since the introduction of the multi-party system in Zambia, but some concerns remained regarding guarantees of Covenant rights in everyday life. His first recommendation towards strengthening those guarantees was to put an end to the practice of torture through specific and immediate measures to end all violations of articles 6 and 7 of the Covenant. Next, freedom of expression must be guaranteed in reality, not just in law. Without that freedom, a democratic system was impossible; the measures taken against journalists affected the credibility of the current Government. Thirdly, the powers of Parliament must be balanced with those of the other branches of Government. Fourthly, article 23 of the Constitution should be amended to eliminate the elements that discriminated against women. Lastly, the broad interpretation of the constitutional provisions governing the State of public emergency could seriously jeopardize fundamental rights and should be reconsidered.

61. Mr. FRANCIS welcomed the news of the release of the detained journalists and hoped that the legislature appreciated that such incidents should not occur in a democracy. He urged the Government to establish an open dialogue with the press in order to foster a good working relationship.

62. His final recommendations had to do with the problem of overcrowding in the prisons. The initiative to provide job and skills training to prisoners was an encouraging step forward. The Government might consider combining the need to provide rehabilitation and training with putting prisoners to work by building their own accommodations. Sentencing policy could also impact on overcrowding, and the initiatives to introduce community service sentences, particularly for first offenders, was to be commended.

63. Mr. KASANDA (Zambia) said that he and the members of his delegation had learned a great deal from the dialogue with the Committee, and had taken serious note of the concerns expressed, and would convey them to the Zambian Government. He was certain that a favourable response to the Committee's constructive criticisms would be reflected in the next periodic report.

The meeting rose at 6 p.m.